

October Update
October 2000

This month we would like to take the opportunity to provide short updates on a number of topics. Although we tend to try to address a single idea or issue in this column each month, gradually items accumulate and present the opportunity to package them together to provide a general update. We hope that you find the following information both interesting and useful.

Comm 46 (and NR 746):

After years in the making, the Departments of Natural Resources and Commerce have substantially completed the development of the "Comm 46" administrative rule. As everybody is aware, this administrative code puts into rule format many of the approaches and systems that DNR and Commerce use to manage the administration of petroleum contaminated sites. In addition, the rule is the culmination of a major effort to put risk analysis into the remediation decision making process. The DNR will be reviewing the final rule with its board and, barring any issues, both agencies will be forwarding a final document for promulgation. Although it is unlikely that Comm 46 will ever be a static rule, the promulgation of the permanent rule does bring to a close a major work project on the part of DNR and Commerce.

Staffing:

Dennis Legler has been named the new Chief for the PECFA Claim Review Section filling the position that was vacated by Miles Mickelson's retirement. Dennis has worked in claim review and most recently has spent a good share of his time working to get the claim backlog paid off. In his role, Dennis will be responsible for supervising the claim review process, managing the financial record keeping for the program and supervision of the field audit process.

In addition to filling the section chief position, a number of hydrogeologist positions have also been filled. These positions were funded through Commerce's share of the EPA federal funds that are provided to Wisconsin to manage petroleum related remediations. In addition to these "EPA" positions, three advanced hydrogeologist slots have also been filled. These positions will deal with a combination of state wide program issues and the facilitation of sites that have unique problems and require significant intervention to achieve a successful completion.

Endorsed Contract and Cap Insurance:

One of the projects that occupied part of the summer was the attempt to develop a standard contract format that would dovetail with the PECFA bidding process. The purpose of the project was to develop a contract that spoke to the cost caps established through the bid process, identified what happens when "changed conditions" were found on site, detailed how additional services were identified and recorded and also enumerated the responsibilities of both the owner and consultant. The effort to develop a contract format that addressed these key points is important because it is one of the building blocks around which we hope to build "cap insurance".

The creation of cap insurance, for sites, which are competitively bid by the DNR or Commerce, was authorized in the last budget bill. With cap insurance, both the site owner and the consultant can be provided a safety net for those sites where actual costs to closure exceed the consultant bid and PECFA's hard cap on reimbursement. Cap insurance would be available to a consultant who:

- Wins a site in the competitive bid process
- Is hired by the site owner
- Signs and follows the "standard contract" for services

Cap insurance would provide for the costs above the PECFA cap with cost overruns being shared by the consultant (through a co-pay) and the insurance provider.

The contract work group has now completed the review necessary to produce a second-generation document. This new iteration of the agreement will again be reviewed with the hope that any additional changes necessary can be completed and work started on the solicitation of an insurance broker to assist in the securing of cap insurance.

Comm 47:

For the last few years, most of the code development focus has been on Comm 46. During that time, a large number of Comm 47 issues have had to wait. These topics include a general updating of information in the code to reflect current coverages, interest reimbursement provisions, new deductibles, etc. In addition to these needed updates, however, there are a number of larger policy and procedural issues that need to be responded to. These include such items as:

- Bidding processes.
- What claimants should fall into a "hardship" category and be channeled to the traditional rather than the new higher deductibles.
- Cost caps.
- Lender cost reporting.
- Remediation performance reporting.
- Claim submittal requirements.

A large amount of Comm 47 work had to be put on hold in order to complete Comm 46. With the promulgation of the Comm 46 permanent rule, however, we believe that we will have the opportunity to return to the work needed on Comm 47. The transition into fall 2000 will bring not only a change in seasons but also a change in work direction and focus for the PECFA program.